

APPENDIX PERFORMANCE MEASUREMENTS

APPENDIX WISCONSIN PERFORMANCE MEASUREMENTS

Performance Measurements

The Parties acknowledge that the Public Service Commission of Wisconsin (“Commission”) in Case No. 6720-TI-160 adopted performance measurements and a remedy plan. The Parties also acknowledge that in Case No. 01-CV-011200 (“Stay Order”), the Wisconsin Circuit Court of Milwaukee County stayed the implementation of portions of the Order issued by the Commission.

Accordingly, CLEC and AM-WI agree that:

- 1.0 Expressly subject to Section 5.0, AM-WI shall implement the most current Performance Measurements and a Remedy Plan as approved by the Commission in Case No. 6720-TI-160 or any relevant successor docket, as well as the state-specific Business Rules developed in relation to such Performance Measurements and remedy plan on the earliest of the following dates: (a) the date when AM-WI voluntarily agrees to implement a Performance Measurement and Remedy Plan that is approved by the Commission, (b) the date when the Stay Order has been lifted, provided that a court of competent jurisdiction has not vacated or reversed the Commission’s decision in Case No. 6720-TI-160 or (c) if a court of competent jurisdiction has reversed the Commission’s decision in Case No. 6720-TI-160 and in conformance with such reversal order, the Commission has issued a new order addressing performance measurements or remedy plans is in effect (“Implementation Date”).
- 2.0 The Performance Measurements and Remedy Plan referred to herein, are not intended to create, modify or otherwise affect the Parties’ rights and obligations with respect to OSS access. The existence of any particular performance measure, or the language describing that measure, is not evidence that CLEC is entitled to any particular manner of access, nor is it evidence that AM-WI is limited to providing any particular manner of access. The Parties’ rights and obligations to such access are defined elsewhere in other appendices to this Agreement.
- 3.0 In addition to the exclusions described in the Performance Measurement Remedy Plan and associated Business Rules, AM-WI shall not be obligated to pay remedies, liquidated damages or assessments for noncompliance with a performance measurement to the extent that such noncompliance was the result of delays or other problems resulting from actions of a Service Bureau Provider acting as CLEC’s agent for connection to AM-WI’s OSS, including Service Bureau Provider provided processes, services, systems or connectivity.
- 4.0 The Parties agree that Performance Measurements, Remedy Plan and Business Rules may be revised through the formal collaborative process between AM-WI and participating competitive local exchange companies established to resolve OSS and

Performance Measurement issues (“Collaborative Process”). The Parties agree to incorporate such changes that are voluntarily agreed to by all parties to the Collaborative Process when finalized, and on a going forward basis unless otherwise ordered by the Commission. In the event a Party disputes the adoption of a proposed revision in the Collaborative Process, the Party seeking such adoption may raise the issue with the Commission for resolution. Until a final Commission order resolving the issue is effective, the Parties agree to abide by the performance measures, Remedy Plan and Business Rules previously agreed to as posted on AM-WI’s CLEC Online website. Nothing in this Appendix limits the rights of either Party to seek changes to Performance Measurements, Remedy Plan or Business Rules.

- 5.0 Each Party reserves its rights, notwithstanding anything to the contrary, to seek appropriate legal and/or equitable review and relief from any Commission or court order in regard to Performance Measurements, Remedy Plan or Business Rules. AM-WI’s compliance with and implementation of any such order shall not represent voluntary agreement to pay liquidated damages nor a voluntary or negotiated agreement under Section 252 of the Act or otherwise, and does not in any way constitute a waiver by such Party of its position with respect to such order, or of any rights and remedies it may have to seek review of such order or otherwise contest the applicability of the Performance Measurements and Remedy Plan.